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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 2119 OF 2003

Dinkar Janardhan Pophale ... Petitioner
vs
1. Padmakar Bhikaraj Gujrathi ..Respondents
& ors.
..
Mr.B.D.Joshi for Petitioner
Mr.P.S.Dani for Respondents
CORAM : D.G.KARNIK, J
DATE: 23RD JUNE, 2004.

P.C.

1. This petition is directed against the order dated 31st December, 2002 passed by the Additional District Judge, Niphad, District Nasik rejecting Civil Misc. Application No. 4 of 2002 for condonation of delay.

2. Suit No. 238 of 1980 was filed by the respondent nos. 1 to 7 against the petitioner and respondent nos. 8 and 9 herein in the court of the Civil Judge, Junior Division, Yeola, District Nasik for possession. The respondent nos. 8 and 9 contested the suit. The petitioner remained absent and hence the suit proceeded ex parte against him. The suit was decreed on 18th January, 1994 against the petitioner and respondent nos. 8 and 9. An appeal against the decree for possession filed by the respondent nos. 8 and 9 in District Court was dismissed and so was Writ Petition No.4738 of 2000. Thereafter, the present petitioner filed an appeal against the same judgment and decree passed in Suit No. 238 of 1980 on 25th February 2002 alongwith an application for condonation of delay alleging therein that the summons of Suit No. 238 of 1980 was not served on him and therefore he was not aware of the exparte decree passed against him. He further alleged that the summons of appeal filed by the respondent nos. 8 and 9 was also not served on him and therefore he was not aware even of the appeal. According to him, he became aware of the decree passed by the trial court for the first time on 1st February 2002 when the respondent nos. 1 to 7 demanded possession from him. He therefore applied for condonation of delay in filing an appeal against the judgment and the decree passed in Suit No.

238 of 1980.

3. The respondent nos. 1 to 7 contested the delay condonation application denying denied the allegations made by the petitioner. They inter alia contended that they have filed Darkhast No. 25 of 1994 against the petitioner as well as respondent nos. 8 and 9 and notice of the said darkhast was served on the petitioner in the year 1994 itself. They produced on record the certified copy of the summons issued to the petitioner under Order 21 Rule 22 of the Code of Civil Procedure in regular Darkhast No.25 of 1994. Therefore, in any event, the petitioner became aware of the darkhast and the fact that Suit No.238 of 1980 was decreed, on 11th June, 1994 when notice of the darkhast was served on him. Delay from 1994 has not been explained at all. Contention that the petitioner became aware of the suit only on 1st February, 2002 is false and hence the petition should be dismissed.

4. There is prpesumption that all official acts are properly done and the notice of the darkhast was properly served. In addition, the Additional District Judge perused the records and compared the signature of the petitioner appearing on the notice of the darkhast which was served on the petitioner on 11th JUne, 1994 with the admitted signatures of the petitioner namely his signature on the application for delay condonation bearing Misc. Application No. 4 of 2002, signature on the Vakalatnama and signature on the interim injunction application made therein and found the signatures to be identical. The learned Additional District Judge has held that the petitioner was served with the notice of darkhast and therefore was aware of the proceedings atleast from 11th June, 1994.

5. At the hearing of Civil Application No. 4 fo 2002, the petitioner did not enter the box despite production of the certified copy of service of notice of darkhast on 11th June, 1994. He did not deny on oath the receipt of the notice on 11th June, 1994 nor filed an affidavit denying his signature on the notice. In the circumstances, the Court was right in coming to the conclusion that the notice of darkhast was served on the petitioner on 11th June, 1994 and therefore there was no sufficient cause to condone the delay. No error is found in the reasoning of the Additional District Judge.

6. Hence, the petition is rejected. Interim

relief, if any, stands vacated.

7. Authenticated copy allowed.

D.G.KARNIK, J

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